IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 2294 OF 1993

Pune Cantonment Board .. Petitioner

Vs.

1. B.G. Shirke & Company and anr. .. Respondents

Mr. K.J. Presswala i/b M/s. Mulla & Mulla & C.B.C.
for petitioner.
Mr. V.B. Naik for respondent no.1.
Mrs. S.S. Bhende, AGP for respondent no.2.

CORAM : B. H. MARLAPALLE &
D. B. BHOSALE,JJ.

Date : March 24, 2006.

P.C.:

1. The challenge in this petition is to the order passed by the Collector and District Magistrate, Pune on 30/3/1992 in Cantonment Appeal No.3 of 1981. The respondent no.1 has its establishment/factory located within the territorial jurisdiction of the Pune Cantonment Board i.e. the petitioner which is established under the Cantonments Act, 1924. Under Section 71 of the said Act the Cantonment Board is empowered to amend the rates of property taxes by revising the annual value of such property. It appears that the respondent no.1 has about 10 acres of land in possession from Survey Nos.72 to 76 of village Mundhwa as per the order of the Collector passed on

12/5/1966 on the payment of occupancy price at the rate of Rs.1600/- per acre. The Company constructed a factory building on the said land and the Cantonment Board levied property tax at Rs.68,525/- payable with effect from 1/4/1969. Against the said assessment, appeals were filed before the District Magistrate who partly allowed the same vide his order dated 1/9/1970 and determined the annual value at Rs.38,750/-. The matter came before the High Court and while disposing the petition, the issue of assessment of annual value was remanded for fresh consideration by the District Magistrate who re-assessed the annual value and fixed at Rs.23,690/-. The respondent no.1 was paying the said amount till the year 1979-80. The Cantonment Board appointed a valuer to determine the property value of respondent no.1 and the subject land and on obtaining the valuer's report issued a notice dated 15/4/1980 to the respondent no.1. Respondent no.1 was heard and it was noticed that additional land of 18 acres was given to the respondent no.1-company some times in the year 1971 on payment of Rs.2,88,000/-. The valuer had fixed the value at the rate of Rs.5/- per sq.ft. and the same was accepted by the petitioner-Board. The respondent no.1, therefore, filed Cantonment Appeal No.3 of 1981 which came to be allowed by the Collector and District Magistrate, Pune by the impugned order and he was pleased to fix the

rental value at Rs.1,42,333/- with effect from 1/4/1981. The Cantonment Board is aggrieved by the said order and hence this petition.

2. It was brought to our notice during the course of hearing of this petition that on similar issue i.e. fixation of assessment value, the Cantonment Board by negotiations has settled with two other companies i.e. M/s. Bharat Forge Co. Ltd. and M/s. Siporex India Ltd. by accepting the land value as Rs.1/- per sq.ft. and thus the issue of fixing the assessment value has been settled by the petitioner-Board in respect of those two companies. Mr.Naik, the learned counsel for the respondent no.1, therefore, at the threshold, urged that the same formula needs to be made applicable in the instant case as well rather than going by the valuer's assessment of Rs.5/- per sq.ft. The learned counsel for the petitioner-board, after taking instructions, has pointed out that the petitioner-board passed the following Resolution in its meeting held on 7/5/2005 in respect of the present case and the said Resolution no.46 reads as under:-

> "Resolution No.46: Considered. Discussed at length and resolved to review the rates, which are agreed in case of Bharat Forge Limited and

the same be increased atleast double and for this purpose discussion be held with representatives of M/s. B.G. Shirke Construction Technology Limited."

. In short, it is the case of the petitioner-board that the respondent no.1 must accept the assessment value by agreeing to fix the land value at Rs.2/- per sq.ft. rather than Rs.1/- per sq.ft. as agreed in the case of the other two companies.

3. In the case of Pune Cantonment Board and anr. vs. Bharat Forge Co.Ltd. reported in AIR 1998 Bombay 53 a Division Bench of this court held, inter alia, that under the Cantonment Act the power of amending the list is not confined to the official year in which the assessment is effected and the Cantonment Board has got the power to recover the tax even for the years prior to the year in which such amendment is effected subject to the limitations contained in the proviso to Section 71 that such recovery cannot be made for the period prior to the year in which the assessment is made.

4. In the instant case, the respondent no.1-company is agreeable to fix the land value at

Rs.2/- per sq.ft. as is demanded by the petitioner-board vide its Resolution No.46 passed on 7/5/2005 and, therefore, we need not deal with the arguments in support of the respective pleas. We deem it proper to leave the parties to arrive at a settlement on the lines it has been arrived at for the remaining two companies referred to hereinabove but on the basis that the land value will be treated as Rs.2/- per sq.ft.

5. The petition is, therefore, disposed off accordingly. Rule discharged. No costs.

(D.B. Bhosale,J.) **(B.H. Marlapalle, J.)**